


Memorandum



Date: January 23, 2017

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Report Evaluating Existing and Potential Development Density Transfer Programs –
Directive No. 152550

The following is pursuant to Resolution No. R-1100-15, adopted by the Board of County Commissioners (Board) on December 1, 2015, which directed a report to evaluate the County's existing market-based development rights programs and explore other potential models for preserving agricultural and environmentally sensitive lands, wildlife habitat, and historic districts and properties. More specifically, Resolution No. R-1100-15 directed a report that:

- 1) studies the efficacy of the County's existing transfer of development rights programs and makes recommendations as to how those programs can be enhanced; identifies and makes recommendations regarding transfer of development rights models that may be implemented in Miami-Dade County, including an assessment of the advantages and disadvantages of each identified model and any cost/administrative burdens that impact the feasibility of those programs; and
- 2) identifies additional actions needed to establish recommended transfer of development rights programs.

The attached report prepared by staff from the Department of Regulatory and Economic Resources provides a general overview of how transfer of development rights programs work, as well as a detailed history of the County's two (2) existing programs intended to preserve agricultural and environmentally sensitive lands, respectively the Purchase Development Rights Program and the Severable Use Rights Program. Additionally, the report provides four (4) case studies to illustrate how transfer of development rights programs administered by other governmental jurisdictions were implemented to preserve farmland, environmentally sensitive areas, and historic structures.

The attached report includes recommendations and policy matters to consider that could enhance or complement the County's existing Purchase Development Rights Program and Severable Use Rights Program, subject to further discussion and legislation.

In accordance with Ordinance No. 14-65, this report will be placed on the next available Board meeting agenda.

If you have any questions or concerns, please feel free to contact Mark Woerner, Assistant Director, Division of Planning, Department of Regulatory and Economic Resources, at (305) 375-2835 or MWOERNER@miamidade.gov.

Attachment

- c: Abigail Price- Williams, County Attorney
Office of the Mayor Senior Staff
Lourdes Gomez, Deputy Director, Department of Regulatory and Economic Resources
Mark Woerner, Assistant Director, Department of Regulatory and Economic Resources
Eugene Love, Agenda Coordinator
Neil Singh, Interim Commission Auditor

Transfer of Development Rights Programs in Miami-Dade County

Resolution No. R-1100-15

Miami-Dade County
Department of Regulatory and Economic Resources

Table of Content

I. Executive Summary	3
II. Overview of TDR Programs	5
i. Success Factors for TDR Programs	5
III. Existing Programs in Miami-Dade County.....	7
i. Severable Use Rights.....	7
ii. Purchase of Development Rights.....	11
IV. Case Studies.....	12
i. Montgomery County, MD: Farmland Preservation Program	12
ii. King County, WA: Farmland and Environmental Preservation Program	12
iii. San Francisco, CA: Historic Preservation Program.....	13
iv. City of Miami, FL: Historic Preservation Program	14
V. Policy Considerations	15
i. Effect of Annexation and Incorporation	15
ii. Effect of Other Density Bonus Programs	15
iii. Historic Preservation TDR Program	15
iv. Agriculture Preservation TDR Program.....	16
VI. Recommendations.....	17
VII. Appendices:	
Appendix A: Relevant CDMP Policies	
Appendix B: SUR Allocation Map	
Appendix C: PDR Acquisition Map	

Executive Summary:

On December 1, 2015, the Board of County Commissioners adopted Resolution No. R-1100-15, which directed the Administration to prepare a report that at a minimum:

- 1) studies the efficacy of the County's existing transfer of development rights programs and makes recommendations as to how those programs can be enhanced;
- 2) identifies and makes recommendations regarding transfer of development rights models that may be implemented in Miami-Dade County, including an assessment of the advantages and disadvantages of each identified model and any cost/administrative burdens that impact the feasibility of those programs; and
- 3) identifies additional actions needed to establish recommended transfer of development rights programs.

This report, provided in response to Resolution No. R-1100-15, evaluates the County's current market-based development rights programs and explores other potential models for preserving agricultural lands, environmentally-sensitive lands, and historic districts and properties. It was prepared by the Department of Regulatory and Economic Resources Division of Planning, with assistance by the Department's Development Services Division and Agricultural Manager's Office.

Transfer of Development Rights (TDR) programs involve the yielding of some or all of the right to develop or use a parcel of land that contains an important resource ("Sending Area") in exchange for a right to develop or use another parcel of land more intensively ("Receiving Area"). The Sending Area is encumbered through a deed restriction, easement or other legal instrument that severs the established right. TDR programs can be used to achieve a myriad of objectives including protection of viable agricultural land, environmentally sensitive land or historic resources.

The County's only existing TDR program is the Severable Use Rights (SUR) program, as established by Chapter 33B of the Code of Miami-Dade County. A total of approximately 4,700 SURs were assigned to the East Everglades Area, which comprises approximately 45,200 acres of land contiguous to Everglades National Park. The purpose of establishing the SUR program was to provide property owners an alternative to on-site development within the environmentally-sensitive East Everglades Area. As of January 2016, a total of approximately 1,116 of the 4,700 allocated SURs have been applied to Receiving Areas in the County. This report identifies the need for preserving and enhancing the market for SURs in the designated Receiving Area and provides recommendations to accomplish this.

In addition to the SUR program, the County implements a Purchase of Development Rights (PDR) program, which involves the purchase of development rights on viable agricultural land but does not provide for those rights to be transferred to a Receiving Area. The PDR program purchases conservation easements from willing sellers, thereby limiting or removing residential development rights and creating the opportunity for continued agricultural use. Properties

eligible for participation in the PDR program include those that are designated 'Agriculture' or 'Open Land' on the CDMP Land Use Plan map and have undeveloped residential density. To date, the County's PDR program has acquired development rights on approximately 664 acres.

This report provides an overview of TDR programs that have been implemented nationally. Many of the characteristics of these national models could be used to develop new TDR programs in Miami-Dade County. This report recommends that the County explore the possibility of developing a TDR program for the preservation of agricultural land that would work in conjunction with the current PDR program. This report also recommends that the County explore the possibility of developing a TDR program for the preservation of historical properties. New TDR programs that allocate credits to the same Receiving Area as the SUR program has the potential to diminish the value of the remaining SURs. When analyzing the viability of new TDR programs, the County should consider the impact of these new programs on the existing SUR program. Appendix A contains selected policies from the County's Comprehensive Development Master Plan (CDMP) that support the current SUR program and encourage the development of new TDR programs.

Overview of TDR Programs:

Transfer of Development Rights (TDR) programs can be used to achieve a myriad of objectives including the protection of viable agricultural land, environmentally sensitive land or historic resources. TDR programs involve the yielding of some or all of the right to develop or use a parcel of land that contains an important resource ("Sending Area") in exchange for a right to develop or use another parcel of land more intensively ("Receiving Area").ⁱ The Sending Area is encumbered through a deed restriction, easement or other legal instrument that severs the established right.

The unused development rights from the Sending Area become a marketable commodity that can be assigned to a site in the designated Receiving Area. TDR programs rely on the identification of Receiving Areas where additional development (above the maximum permitted) would be appropriate. The additional development must be compatible and have adequate infrastructure and services. To provide for a successful TDR program, there must be demand for additional development (above the maximum permitted) within the designated Receiving Area. Since TDR programs are market driven, they are subject to the boom and bust cycles of the market. Some programs utilize TDR banks to purchase the development rights then market them to prospective purchasers.

In most instances, rights are severed from the Sending Area in perpetuity. However, some TDR programs allow development rights to be reassigned to Sending Areas if circumstances change and development becomes feasible. Charlotte County, Florida, for example, allows Sending Areas to become Receiving Areas if the comprehensive plan designates the area for development. The property owner must purchase TDRs to restore rights.

Success Factors for TDR programs:

A review of relevant literature and case studies provides insight into key attributes that contribute to the success of TDR programs.

Sending Area. TDR programs work best with strict land use controls such as density limitations in the Sending Area. To incentivize transfer of the development rights at the Sending Area, the value of the TDRs must be sufficient to offset speculative development expectations. The value of TDRs is affected by the volume of TDRs on the market and the demand for the TDRs in the Receiving Areas. A high transfer ratio can help to incentivize transfer of development rights at the Sending Area.

Receiving Area. TDR systems can fail if there is no demand for additional density in the Receiving Area or if it is easier or cheaper to obtain density through other means, such as rezoning. Establishing density limits without the use of TDRs and a higher density limit with the use of TDRs can encourage use of TDRs and address issues of service availability and compatibility upfront. Also, allowing for TDRs to be assigned to Receiving Areas through an administrative approval process reduces costs and uncertainty in the process. The size of the Receiving Area also contributes to the demand for the TDRs. It is recommended that the

Receiving Area have a capacity that is at least equal to the TDR allocations in the Sending Area.ⁱⁱⁱ Incorporation of Receiving Areas into municipal boundaries has the potential to diminish the receiving area size if the new municipality does not participate in the TDR program. Competing incentives that allow developers in the Receiving Area to obtain density through other means, such as rezoning or other density bonus programs, may undermine the TDR program.

Administration. The establishment of a TDR bank can allow for immediate purchase of development rights from interested sellers. However, many successful TDR programs do not utilize TDR banks. The main disadvantage of a TDR bank is that it requires expenditure of public funds, but it also allows these funds to be combined with grants that can enhance funding of the program. Use of a TDR bank also allows the local government to use the funds for targeted conservation priorities. To help facilitate the transfer of development rights, local governments can maintain a list of interested sellers and buyers.

Existing Miami-Dade County Programs:

Severable Use Rights Program

Overview. In 1981, Miami-Dade County designated the East Everglades Area as an area of critical environmental concern and established the Severable Use Rights (SUR) program, which is a type of transfer of development rights program. Board Ordinance No. 81-1 created Chapter 33B, Article II (East Everglades) of the Code, which declares that the East Everglades Area is an area of environmental and natural resource value to Miami-Dade County and constitutes an area of critical environmental concern in Miami-Dade County. The East Everglades Area is located to the west of the urbanized part of the County contiguous to the Everglades National Park and encompasses approximately 242 square miles. Management areas were established based upon the environmental conditions and management purposes.

To further the goals and objectives of Chapter 33B, the Board enacted Ordinance No. 81-121 to create the East Everglades Zoning Overlay and Ordinance No. 81-122 to establish the SUR program. The SUR program addresses land within Management Areas 1, 3B and 3C of the East Everglades Area, which comprises approximately 45,200 acres. The SUR program provides a process by which development potential can be relocated from the East Everglades Areas where development is considered undesirable due to environmental impacts (the “Sending Area”) to other sites within the urbanized areas of the County (“Receiving Area”). The Receiving Area include lands zoned for residential, commercial and industrial development within the Urban Development Boundary (UDB). Following transfer of the SUR, the Sending Area can only be used for nonresidential uses.

The SURs are freely transferable and may be sold for immediate application to a receiver site or held by an intermediary for application towards future development. As depicted on Appendix B, the ratio of SURs assigned to Sending Area within the East Everglades Area varies by management area as summarized below:

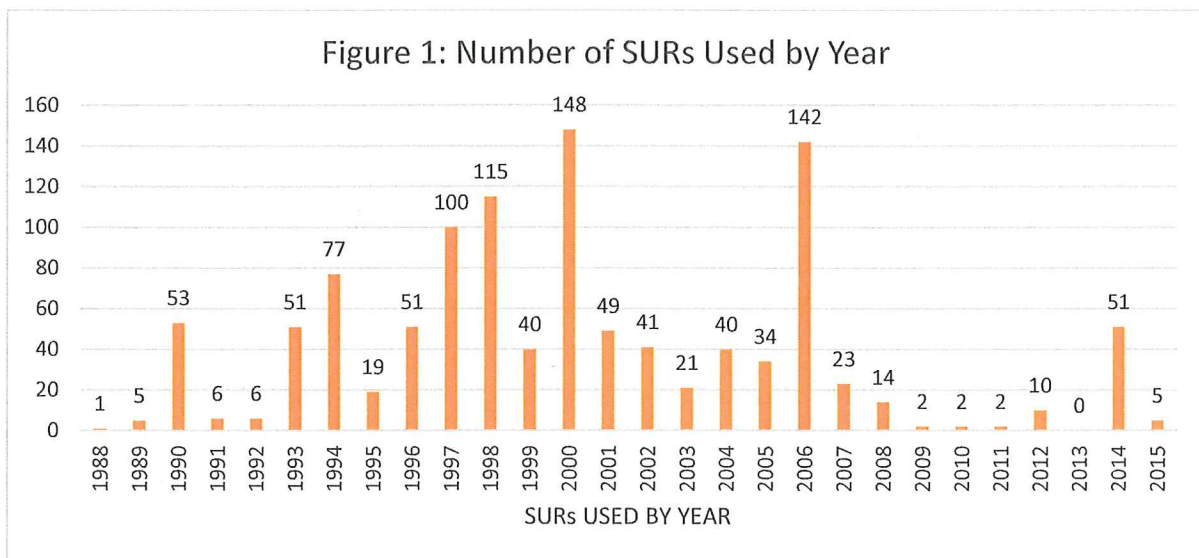
- Management Area 1 – One severable use right per five (5) gross acres;
- Management Area 3B – One severable use right per 12 gross acres; and
- Management Area 3C – One severable use right per 40 gross acres.

Based on the allocation ratio, it is estimated that 4,700 SURs were assigned to the East Everglades Area. In some cases, a property owner may only be entitled to a fraction of a SUR.

SURs can be used to increase density and intensity or vary the minimum lot area and frontage on Receiving Sites. The development bonuses that can be attained vary by zoning districts. Until recently, the regulations provided that SURs may only be used to secure a development bonus for lands located in the unincorporated portions of Miami-Dade County. On October 6, 2015, the Board adopted Ordinance No. 15-108, which allowed SURs to be assigned to Receiving Sites located within a municipality allowing for the use of such rights.

The assignment of SURs to the receiving site is accomplished through administrative approval and does not require a public hearing. However, an applicant or aggrieved party who alleges a misinterpretation of the Code may appeal the administrative approval of SUR's to the Board of County Commissioners. The SUR regulations, and the procedures implemented by the Department of Regulatory and Economic Resources require the developer to demonstrate the following: 1) that he or she is the bona fide owner of the SUR; 2) that the SURs proposed for development have not been previously used to secure a development bonus; and 3) that an instrument of conveyance of the SURs has been recorded in the chain of title of the receiver parcel and that such instrument severs the right to develop residential uses on the Sending Area. Once an SUR is applied to a Receiving Area, the SUR is extinguished and cannot be used again.

SUR Program Efficacy. It is estimated that 4,700 SURs were assigned to the East Everglades Area based upon the ratios for each of the three management areas. As of the end of 2015, a total of approximately 1,108 SURs have been processed and applied to Receiving Sites within the developable areas of unincorporated Miami-Dade County (See Figure 1). The majority of SURs processed by the Department of Regulatory and Economic Resources have been applied to residential developments including single-family lot-splits, multiple-family housing developments, and hotels. Between 1989 and 2007, there was an average of 54 SURs used per year (See Figure 1). The use of SURs declined around the time of the economic downturn, but has since rebounded. Approximately 3,592 SURs remain available for future development as of the end of 2015. In some cases, an intermediary may own hundreds of SURs that are being held for application towards future development.



When state and federal agencies make an offer to purchase property in the East Everglades Area, they provide the property owner with the option of retaining SURs or conveying them to the purchasing agency. The agencies do not account for SURs in the appraisal of the land so the presence of SURs does not affect the purchase price of the land for conservation purposes. ii

Alternatively, retention of the SURs by the seller may dilute the value of SURs on properties in the East Everglades Area where development can still occur. Acquisition and extinguishment of these SURs when properties are purchased by state or federal agencies would help to maintain the value of SURs on properties that are still vulnerable to development.

In the low-density zoning districts, the SUR program allows for a reduction of the minimum lot area with the use of an SUR. Since the SUR program was established, new zoning districts have been created that allow for smaller lot areas by right, thereby allowing developers to achieve smaller lot areas without the use of SURs. For example, two new zoning district classifications, RU-1M(a) and RU-1M(b), were created in 1995, which allow developers to create single family residential lots with lot areas of 5,000 square feet and 6,000 square feet, respectively. The RU-1Z zoning district, created in 1988, allows for lot areas of 4,500 square feet. In comparison, the smallest lot that can be created with the use of a SUR is 6,000 square feet. Property owners may seek a district boundary change to the RU-1Z, RU-1M(a) or RU-1M(b) districts through the public hearing process in lieu of purchasing SURs. In addition, there is currently no incentive for the use of SURs for properties designated RU-1Z, RU-1M(a) or RU-1M(b).

In 2005, Ordinance No. 05-143 amended Chapter 33B to allow the use of SURs to add residential density and intensity within the Core and Center Subdistricts of Urban Centers. Urban Centers are intended to be moderate- to high-intensity areas that contain a concentration of different urban functions integrated both horizontally and vertically. Urban centers allow significant density by right, therefore, demand for additional density may be limited in these areas. To date, no projects have been developed within a designated urban center utilizing a SUR density bonus. The use of SURs can be further encouraged in urban centers by lowering the maximum density that is permitted by right and requiring the use of SURs to increase the density beyond this established threshold.

The County's CDMP contains policies that promote the use of SURs, which has likely contributed to the efficacy of the program. However, these policies can be strengthened to further promote the use of SURs. For example, CDMP Policy LU-8H currently requires participation in the PDR or TDR programs for residential applications requesting expansion of the UDB, there is no similar requirement for applications proposing business or industrial uses. In addition, Policy LU-8H does not detail the extent to which applicants are expected to participate in the programs. Strengthening CDMP Policy LU-8H to require use of TDRs in connection with all applications to expand the UDB and defining the extent of participation that is required in the TDR program would further promote use of SURs.

Since the Receiving Area for the SUR program includes all land zoned for residential, commercial and industrial development within the UDB, annexation and incorporation of this area reduces the available capacity for development of SURs. On October 6, 2015, the Board adopted Ordinance No. 15-108, which allowed SURs to be assigned to Receiving Sites located within a municipality but did not require participation. Although the conservation of land in the East Everglades Area provides a countywide benefit, it may not be seen as furthering the interests

of a particular municipality. For this reason, further annexation and incorporation may reduce the size of potential Receiving Areas unless municipalities are required or sufficiently encouraged to participate in the SUR program.

Purchase of Development Rights Program

Overview. The Purchase of Development Rights (PDR) Program was initially authorized as part of the Building Better Communities General Obligation Bond (BBC-GOB) Program as approved by voters in 2004. The BBC-GOB Program allocated funding for the purchase of greenspace including development rights to maintain agricultural lands and protect well fields. The details of the PDR Program were initially outlined in Resolution No. R-1036-07 and later refined in Resolution No. R-1016-09.

The lower, long-term returns associated with agricultural production often cannot compete with the higher, more immediate returns associated with development. For that reason, many agricultural landowners choose to sell their farmland for development, threatening the community's agricultural heritage, food security and quality of life. Without programs to help farmers find alternatives to liquidating businesses, farmland will continue to be lost. The PDR Program allows agricultural landowners to retain their existing agricultural use rights while receiving compensation for the land's development value.

The PDR program purchases conservation easements on viable private agricultural property from willing sellers, thereby limiting or removing residential development rights and creating the opportunity for continued agricultural use. Properties eligible for participation in the PDR program include those that meet the following criteria: 1) are located entirely in Miami-Dade County; 2) are designated 'Agriculture' or 'Open Land' on the CDMP Land Use Plan map; 3) have undeveloped residential density available; 4) have at least 70% of its land area devoted to active agricultural use; 5) is suitable for agricultural production; and 6) is not subject to any unresolved enforcement activity by any governmental entity. Applications for participation in the PDR program are reviewed administratively then recommendations are forwarded to the Board of County Commissioners along with an appraisal for final approval. Properties with a perpetual conservation easement are eligible for a reduction in ad valorem taxes.

PDR Program Efficacy. To date, the County's program has acquired development rights on approximately 664 acres of farmland (See Appendix C). The County is finalizing the purchase of development rights on an additional approximate 142 acres, which was approved by the Board of County Commissioners on December 1, 2015. All PDR Program acquisitions have been completed with matching grant funds from the United States Department of Agriculture.

The PDR program could benefit from a complementary TDR program with defined goals. Such goals could include prioritization of acquisition in areas that provide additional benefits such as agri-tourism, growth management or environmental benefits. In addition, transfer of development rights in consolidated areas could magnify the effectiveness of the PDR program by preserving larger areas for agricultural use and preventing encroachment by residential land uses.

Case Studies

There are just over 200 TDR programs in the United States.ⁱⁱⁱ Many of the characteristics of these national models could inform modifications to the County's current SUR program or implementation of new TDR programs. Descriptions of select TDR programs are provided below.

Montgomery County, Maryland – Farmland Preservation TDR Program

Montgomery County was experiencing significant loss of farmland to five-acre subdivisions – the maximum density permitted under pre-1980 zoning. In 1980, the County completed a report, which found that a 25 acre parcel of land is a feasible size for a productive agricultural business in Montgomery County^{iv}. As a result, Montgomery County downzoned 93,000 acres to allow a maximum density of one dwelling unit per 25 acres and instituted a TDR program to allow unused development rights to be transferred to Receiving Areas in designated growth areas. The program grants transferrable rights at one TDR per five acres. An easement is recorded to permanently restrict development once the rights are severed. In 1982, Montgomery County established a TDR bank to buy the TDRs, bank them, and resell them at auction to the highest bidder. As evidence of the success of the program, most Sending Area owners found willing buyers without the use of the TDR bank and, after going unused for 8 years, the bank was terminated. As of June 2013, the program has protected more than 72,000 acres of farmland.

There are several factors that may have contributed to the success of the Montgomery County program. By downzoning the Sending Area in conjunction with the TDR program, the County controlled speculative development expectations. In addition, Montgomery County designated Receiving Areas with a baseline density plus a maximum density with the use of TDRs. This created an environment where density beyond the baseline could only be achieved through the use of TDRs. Montgomery County also allowed a greater TDR transfer rate for multi-family units in the Receiving Area (e.g., one TDR allows for one single-family unit or two multi-family units). Since the value of land goes up as density increases but the value per unit goes down, allowing for a greater conversion for multi-family units may offset this diminishing value.ⁱⁱⁱ

King County, Washington – Farmland and Environmental Preservation TDR Program

King County's TDR program had resulted in the preservation of more than 141,000 acres of targeted farmland, forest, critical habitat and other open spaces. Sending Areas include those with agricultural, environmental or recreational value. King County established a TDR bank to purchase, market and sell development rights. However, most of the TDRs have been bought and sold through private-party transactions. Due to funding limitations, the TDR bank is primarily used to buy development rights on land that is considered to have the greatest public value.

The original program, adopted in 1993, only allowed transfer of the development rights into unincorporated areas of King County. The program was later expanded to also allow

development rights to be transferred to receiving sites located in municipalities. To incentivize use of the TDRs within municipal boundaries, King County will fund infrastructure or service improvements (e.g., parks, roadway, transit or streetscaping) to offset the impacts of increased densities. An interlocal agreement must be in place between King County and the municipality before TDR bank development rights can be transferred. As part of the interlocal agreement, the city can specify additional Sending Area criteria and detail the infrastructure or service improvements that will be provided by the County.

Factors that have likely contributed to the success of the King County program include the establishment of a TDR bank and municipal incentives that promoted participation in the program. Although most of the TDRs have been transferred through private-party agreements, the establishment of a TDR bank has allowed King County to purchase development rights on land determined to have the greatest value based on the goals of the program. In addition, the infrastructure and service improvements offered to municipalities that participate in the program allows these cities to realize a benefit and offset the impacts from accepting TDR credits. Since the Sending Areas are located outside of the cities' boundaries, the benefits associated with preservation in the Sending Areas may not be sufficient to otherwise incentivize participation in the program. King County also maintains a TDR exchange that helps to connect interested buyers and sellers.

San Francisco, California – Historic Preservation TDR Program

The City of San Francisco's TDR program was established in 1985 to provide for preservation of historically significant structures. The City designated 253 properties as "Significant" and 183 properties as "Contributory." Designated sites include both private and public properties. TDRs are allocated at the Sending Area based on the difference between the floor area allowed by zoning and the floor area of the existing structure. TDRs can be allocated at non-historic sites within the receiving area provided the project does not exceed applicable height and bulk controls. Assignment of TDRs at the receiving site can be accomplished through administrative approval and does not require public hearing approval. As of 2013, the City had certified TDRs totaling 5.3 million square feet of floor area originating from 112 parcels.

As part of the TDR program, the City lowered density limits in the Receiving Area thereby creating a greater incentive for developers to acquire TDRs to achieve desired densities. In addition, the City has strong controls that make it difficult, if not impossible, to demolish or alter Significant structures. This creates a strong incentive for property owners of Significant structures to participate in the TDR program. Demand for TDRs has been sufficient enough to allow all transactions to be conducted as third-party transactions, without the need for a TDR bank. The City maintains a centralized database of available TDRs, but does not regulate the sale of TDRs or set pricing. The sale of TDRs from public properties provides a funding source for the restoration and maintenance of those historic structures, but the City has been cautious about the sale of those TDRs so as not to significantly affect the value of private TDRs.

City of Miami – Historic Preservation TDR Program

In 2008, the City of Miami expanded its historic preservation ordinance to allow for transfer of development rights. The program allows the owner of a locally or nationally designated historic property located in the general urban zoning districts to sell unused development potential that can then be assigned to properties located within the urban core. To date, property rights have been transferred from 25 historic properties through the TDR program.

The proceeds derived from the TDR sale must be used for future improvements and maintenance of the historic property. The property owner demonstrates compliance with this requirement through submittal of a maintenance/preservation plan. Upon transfer of the development rights, a restrictive covenant is placed on the Sending Area to sever the transferred development rights and ensure that the historic structure is retained and maintained in accordance with the maintenance/preservation plan.

The City of Miami utilizes a three-step application process. The purpose of the first step, the Certificate of Eligibility, is to confirm the historic status of the property and determine the square footage that is eligible for transfer. Then the property owner of the historic property submits an Application to Qualify for Certificate of Transfer in which they detail the existing conditions of the property and long-term maintenance plan. The final step in the process, the Application for Certificate of Transfer, occurs once a Receiving Area has been identified. As part of the application, the property owner of the Sending Area submits a draft restrictive covenant. The property owner of the Receiving Area submits a Letter of Intent describing how the transferred development rights are to be applied. Following approval, both the restrictive covenant and Certificate of Transfer are recorded.

Policy Considerations

Effect of Annexation/Incorporation

As mentioned previously, TDR programs benefit from the participation of municipalities because it broadens the Receiving Area. Encouraging participation of municipalities can be challenging since the conservation efforts typically occur outside of their boundaries. In addition, municipalities may have TDR programs that implement objectives wholly contained within its boundaries. Unless municipalities are incentivized or required to participate, further annexation and incorporation of the County will continue to erode the available Receiving Areas for TDR programs.

Effect of Other Density Bonus Programs

TDRs can be used to achieve a myriad of objectives including protection of agricultural land, conservation of environmentally-sensitive land and historical resources. However, each new TDR program has the potential to diminish the value of current TDR programs if credits are allocated to the same Receiving Area. In addition, it is important for the County to consider whether new legislation will introduce competing incentives, whereby developers in the Receiving Area can obtain development potential through other means, as this will diminish the value of TDRs.

Historic Preservation TDR Program

The County's historic preservation goals could be advanced through the implementation of a TDR program similar to those implemented by the Cities of San Francisco and Miami. On March 3, 2016, the Mayor's Advisory Work Group for Historic Preservation issued its final recommendations. One of the recommendations states that the County should create and implement a TDR program as another incentive for preservation and further recommended that the program include provisions allowing for the donation of TDRs to non-profit organizations.

Benefits of a Historic Preservation TDR program include allowing the owner of a property with a historic structure to realize the full value of the property while ensuring the perpetual protection of the historic structure. In addition, proceeds from the sale can be used to restore/maintain historic structure. One of the challenges is the difficulty of implementing the Historic Preservation TDR program across jurisdictions. The County currently serves as the historic preservation staff for 24 municipalities. Consistent with Board Resolution No. R-1050-16, the County should determine the market viability of a Historic Preservation TDR program and assess the impacts of the program on the current SUR program.

Agriculture Preservation TDR Program

CDMP Policy LU-1R states that Miami-Dade County shall develop and adopt a transfer of development rights program to preserve agricultural land that will be supplemented by the

purchase of development rights program to preserve agricultural land and environmentally sensitive property. Where a strong market exists, Agriculture Preservation TDR programs are an excellent way to protect viable agricultural land. It allows the property owner to retain agricultural use of the property while realizing some economic benefit from the severed development rights. It is recommended that the County further study the market viability of an Agriculture Preservation TDR program and assess the impacts of the program on the current SUR program. Consistent with CDMP Policy LU-1R, the study should consider how the Agriculture Preservation TDR program would complement the existing PDR program.

Recommendations

- 1) **ISSUE:** The County should consider further studying the feasibility of establishing new TDR programs to accomplish objectives such as preservation of agricultural land and historical properties. Among other factors, the study should assess the impacts of the program on the County's SUR program.

RECOMMENDATION: Consistent with CDMP Policy LU-1R, explore the possibility of developing a TDR program for the preservation of agricultural land that would work in conjunction with the current PDR program. Such program should prioritize transfer of development rights in areas that provide additional benefits such as growth management, agri-tourism and/or environmental benefits. Transfer of development rights in consolidated areas could complement the effectiveness of the PDR program by preserving larger areas for agricultural use and preventing encroachment by residential land uses. In addition, the study should consider the market viability of an Agriculture Preservation TDR program and assess the impacts of the program on the current SUR program.

RECOMMENDATION: Consistent with Resolution No. R-1050-16, the County should look at the feasibility of developing a TDR program for the preservation of historical properties. The feasibility study should determine the market viability of a Historic Preservation TDR program and assess the impacts of the program on the current SUR program.

- 2) **ISSUE:** CDMP Policy LU-8H currently requires participation in the PDR or TDR programs for residential applications requesting expansion of the UDB. There is no similar requirement for applications proposing business or industrial uses. In addition, Policy LU-8H does not detail how applicants are expected to participate in the programs.

RECOMMENDATION: Amend Policy LU-8H to require use of TDRs in connection with applications to expand the UDB for commercial or industrial uses.

RECOMMENDATION: Amend Policy LU-8H to define the extent of participation in the PDR and TDR programs that is expected for applications requesting expansion of the UDB.

- 3) **ISSUE:** The RU-1Z zoning district, created in 1988, allows for a minimum lot area of 4,500 square feet. The RU-1M(a) and RU-1M(b) zoning districts, created in 1995, allows for a minimum lot area of 5,000 square feet and 6,000 square feet, respectively. Alternatively, the smallest lot that can be created with the use of a SUR is 6,000 square feet.

RECOMMENDATION: Amend Section 33B-45 (Development of Severable Use Rights) of the Code to allow for reduction of the required lot area to 4,000 square feet for properties designated RU-1Z or RU-1M(a) and 5,000 square feet for properties designated RU-1M(b) through purchase of SURs.

- 4) **ISSUE:** Annexations and incorporations have the potential to reduce the available Receiving Area for SURs. On October 6, 2015, the Board adopted Ordinance No. 15-108, which allowed SURs to be assigned to Receiving Areas located within a municipality but did not require participation. Since the preservation activity is typically occurring outside of the municipal boundary, there is little incentive to accept SURs.

RECOMMENDATION: Coordinate with municipalities to encourage use of SURs within existing municipal boundaries and require municipalities to participate in the SUR program (and any future TDR program, once established) as a condition of annexation or incorporation.

- 5) **ISSUE:** The property owner is given the option of retaining SURs when property is acquired by a state or federal agency. These SURs, which are no longer assigned to a property that is at risk of development, dilute the value of SURs on properties where development can still occur.

RECOMMENDATION: The Board of County Commissioners should urge federal and state agencies to acquire and extinguish SURs when land is acquired within the East Everglades Area.

- 6) **ISSUE:** In 2005, Chapter 33B was expanded to allow the use of SURs in the Core and Center subdistricts of urban centers to obtain additional density. Assignment of urban center zoning typically involves the allocation of additional development density and intensity. Since the urban center zoning typically permits a significant amount of density, there may not be demand for additional density within these areas. To date, no projects have been developed with the use of an SUR density bonus within a designated urban center.

RECOMMENDATION: Amend Sec. 33B-45(g)(15) of the Code to also allow use of SURs in the “Edge” Subdistrict of urban centers.

RECOMMENDATION: Amend Sec. 33B-45(g)(15) of the Code to delete the current density bonus limit of eight (8) dwelling units and allow an increase of up to 20 percent over permitted densities.

RECOMMENDATION: Use the urban center zoning process to encourage use of SURs by establishing maximum densities without the use of SURs and maximum densities with SURs when establishing future urban center districts.

ⁱ Meck, Stuart, FAICP, Gen. Editor. Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change, 2002 Edition, American Planning Association

ⁱⁱ Verbal communication with staff from the Department of the Interior, National Parks Service, Land Acquisition Office and South Florida Water Management District, Leasing and Real Estate Support Office

ⁱⁱⁱ Nelson, Arthur C., Rick Pruetz, Doug Woodruff. TDR Handbook: Designing and Implementing TDR Programs

^{iv} Montgomery County Office of Economic Development, Small Farm Economics Report

Appendix A

List of Relevant Comprehensive Development Master Plan (CDMP) Policies

CDMP Policies

Policy LU-1R. Miami-Dade County shall take steps to reserve the amount of land necessary to maintain an economically viable agricultural industry. Miami-Dade County shall adopt and develop a transfer of developments rights (TDR) program to preserve agricultural land that will be supplemented by a purchase of development rights program to preserve agricultural land and environmentally sensitive property. The density cap of the land use category in the receiving area established by the TDR program may be exceeded. Land development regulations shall be developed to determine the extent that the density cap may be exceeded based on parcel size but in no case shall it exceed 20 percent.

Policy LU-8H. Applications requesting expansion of the UDB shall be in accordance with the foregoing Policies LU-8F and LU-8G, and must meet the following criteria to be considered for approval:

* * *

- c) Residential development must participate in the Purchase of Development Rights, Transfer of Development Rights (TDR) or other County established program(s) geared to protecting agricultural lands and/or environmentally sensitive lands;

Policy LU-9C. Miami-Dade County shall continue to encourage and promote the transfer of Severable Use Rights (SUR) from lands which are allocated SURs in Chapter 33B, Code of Miami-Dade County, to land located within the Urban Development Boundary as designated on the LUP map. When revising development regulations such as may be required to comply with Chapter 163, F.S., the County shall seek to create additional incentives for acquisition and use of SURs. As recommended in Miami-Dade County's State Housing Initiatives Partnership (SHIP) Program Housing Incentives Plan, the receiver area density bonuses in Dade's SUR program should be increased to improve the effectiveness of the program and the production of affordable housing. The County shall consider modifying the SUR program to provide for the transfer of development rights from land acquired by government for uses other than residential or commercial purposes to development sites inside the UDB.

Policy ROS-4G. The Parks, and Recreation and Open Spaces Department will collaborate with County agencies that oversee funding programs and accounts related to horticulture, arboriculture, environmental mitigation, hazard mitigation, transportation, crime prevention, tourist development, and community and economic development, which can potentially benefit local residents through the enhancement of parks and recreation programs, should assist with the implementation of the policies in this Element by participating in inter-agency partnerships to address, for example, the following:

* * *

- ix.) The application of tax increment finance districts, transfer of development rights, community redevelopment districts, and overlay zoning districts as a means to accelerate and assist development of recreation facilities.

Residential Communities. Severable Use Rights (SURs) or Transfer of Development Rights (TDRs) may be transferred to parcels within the designated receiving area. When Severable Use Rights or Transfer of Development Rights are utilized on residentially designated parcels, development will be allowed to exceed the maximum limits designated for the site or affected portions of it; however, this provision does not authorize the granting of a zoning district that, without use of SURs or TDRs, would exceed the Plan density limit. (*Interpretation of the Land Use Plan Map: Policy of the Land Use Element*)

Business and Office. Where SURs or TDRs are transferred to Business-designated parcels which are zoned or to be used for residential development, the allowances of the Residential communities section may be used within the limits provided in (the Business and Office category text). (*Interpretation of the Land Use Plan Map: Policy of the Land Use Element*)

Office/Residential. Where SURs or TDRs are transferred to Office/Residential-designated parcels which are zoned or to be used for residential development, the allowances of the Residential communities section may be used within the limits provided in (the Office/Residential category text). (*Interpretation of the Land Use Plan Map: Policy of the Land Use Element*)

Urban Development Boundary. The entire unincorporated area within the UDB is eligible to receive and utilize Severable Use Rights (SURs) in accordance with provisions of Chapter 33-B, Code of Miami-Dade County. Accordingly, certain developments as specified in Chapter 33-B may be entitled to density or floor area bonuses as authorized by Chapter 33-B. If the existing SUR program is modified pursuant to Land Use Element Policy LU-9C or other transferable development rights programs are established, all rights established by such programs shall be transferable to receiver sites inside the UDB as established in those programs. (*Interpretation of the Land Use Plan Map: Policy of the Land Use Element*)

Appendix B

Map showing Severable Use
Rights Allocation by Management Area



Tamlami Canal



Appendix C

Map showing location of property rights
acquired through the Miami-Dade County
Purchase of Development Rights Program

